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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Adam J. Palmer, a single man;
William J. Morrison, a single
man; Sarai Phillips, a single
woman; Lance Benchley, a
single man; and a class of
others similarly situated,

Plaintiffs,

v.

Gavin and Nancy Hays, husband
and wife; and SpringBoard,
Inc., an Arizona Corporation

Defendants.

No. 2:15-cv-00636-SRB

**FIRST AMENDED COLLECTIVE
ACTION COMPLAINT**

NOW COME Plaintiffs, Adam J. Palmer, William J.
Morrison, Sarai Phillips, and Lance Benchley, by and through
their attorneys, Lubin & Enoch, P.C., bringing this action
pursuant to the Fair Labor Standards Act of 1938, 29 U.S.C.
§ 201, et seq. ("FLSA").

INTRODUCTION

1. Plaintiffs are former employees of Defendants Gavin
and Nancy Hays and their company, SpringBoard, Inc.

1 (hereinafter "SpringBoard" and collectively referred to as
2 "Defendants").

3 2. In this lawsuit, Plaintiffs allege that Defendants
4 have willfully contravened their right to be compensated for
5 all overtime due them in accordance with the FLSA, 29 U.S.C.
6 § 207.

7 **PARTIES**

8 3. Plaintiffs, except for Plaintiff Benchley,
9 currently and during all times relevant to this proceeding,
10 have resided in Maricopa County, Arizona. Plaintiff
11 Benchley is a resident of Missoula, Montana, however he
12 lived in Maricopa County during the time he worked for
13 Defendants.

14 4. Plaintiffs are former employees of Defendants as
15 defined in 29 U.S.C. § 203(e)(1).

16 5. Pursuant to 29 U.S.C. § 216(b) Plaintiffs also seek
17 to represent all other similarly situated employees who
18 work, or have worked, for Defendants as Relationship
19 Managers at Defendants' main office, located at 6970 E.
20 Chauncey Lane Suite #110, Phoenix, Arizona, since March 3,
21 2012, and who have not been paid the requisite overtime
22 compensation.

23 6. Plaintiffs request that they be permitted to serve
24 as representatives of those who will later consent to
25 participate in this action and that this action be granted
26 collective action status pursuant to 29 U.S.C. § 216(b).

7. Plaintiffs presently believe and allege that the class includes approximately twenty (20) to thirty (30) separate individuals who have, since March 6, 2012, worked for Defendants as Relationship Managers. Accordingly, joinder of all members of the class would be impracticable.

8. The claims asserted herein on behalf of Plaintiffs and the class present questions of law and fact common to the class including, in particular, whether Defendants have, *inter alia*, failed to pay the requisite overtime compensation to their employees and whether Defendants misclassified their Relationship Managers as FLSA exempt employees.

9. Plaintiffs' claims are typical of the claims of the class.

10. Plaintiffs, as representative parties, will fairly and adequately protect the interests of the class.

11. The prosecution of separate lawsuits by individual members of the class would not only be judicially inefficient, but it would also create a risk of inconsistent or varying adjudication with respect to individual members of the class, which would establish incompatible standards of conduct for Defendants.

12. Defendants Gavin and Nancy Hays (hereinafter collectively referred to as "the Hays") are now, and at all times relevant hereto have been, husband and wife, constituting a marital community under the laws of the State of Arizona. The acts engaged in, and the omissions made by,

1 the Hays were performed as agents, and for the benefit, of
2 the marital community.

3 13. Upon information and belief, the Hays are
4 residents of Maricopa County, Arizona, and have been for all
5 times relevant to this proceeding.

6 14. The Hays are "employer[s]" as defined in 29 U.S.C.
7 § 203(d).

8 15. SpringBoard is an Arizona corporation with its
9 principal place of business at 6970 E. Chauncey Lane Suite
10 #110, Phoenix, Arizona 85054. According to its website,
11 SpringBoard focuses "exclusively on finding highly rewarding
12 jobs for skilled clinical professionals working in
13 catheterization labs, electrophysiology, and imaging."

14 16. Gavin Hays ("Mr. Hays") is the CEO and sole
15 director of SpringBoard. Nancy Hays ("Mrs. Hays") is the
16 statutory agent for SpringBoard. The Hays, and Mr. Hays in
17 particular, exercise managerial responsibilities and
18 substantial control over the terms and conditions of the
19 employees' work. Among other things, Mr. Hays is primarily
20 responsible for hiring and firing employees, supervising and
21 controlling employee work schedules and conditions of
22 employment, determining the rate and method of payment, and
23 maintaining any employment records that may exist.

24 17. SpringBoard is an "employer" as defined in 29
25 U.S.C. § 203(d).

26 18. Upon information and belief, SpringBoard is not
27 only influenced and governed by the Hays, but there is such

1 a unity of interest and ownership that the individuality, or
2 separateness, of SpringBoard and the Hays has ceased to
3 exist.

4 19. Upon information and belief, the facts are such
5 that an adherence to the fiction of the separate existence
6 of SpringBoard and the Hays would, under these particular
7 circumstances, sanction a fraud or promote injustice.

8 20. SpringBoard's annual gross volume of sales or
9 business done is not less than \$500,000. In addition, while
10 they were employed by Defendants, Plaintiffs were engaged in
11 commerce or in the production of goods for commerce. For
12 instance, while Plaintiffs were employed by Defendants as
13 Relationship Managers they communicated with individuals all
14 over the United States and placed these individuals in jobs
15 in multiple states.

16 **JURISDICTION AND VENUE**

17 21. Plaintiffs originally filed this action in
18 Maricopa County Superior Court on March 6, 2015.
19 Defendants timely and properly removed this action to this
20 Court on April 8, 2015.

21 22. This Court has jurisdiction over the subject
22 matter of this complaint pursuant to 28 U.S.C. § 1331.

23 23. Venue is proper in this Court pursuant to 28
24 U.S.C. § 1391(b).

25 **GENERAL ALLEGATIONS**

26 24. From on or about July 29, 2013 through
27 approximately October 28, 2014, Defendants employed Adam

1 J. Palmer ("Palmer"). During this period of time, Palmer
2 worked for Defendants as a so-called Relationship Manager.

3 25. As a Relationship Manager, Palmer's
4 responsibilities consisted of the following: performing
5 recruitment responsibilities, marketing available staff to
6 existing and prospective clients, identifying candidates
7 by recruiting the most qualified employees available,
8 developing new and existing candidates, and making 300+
9 phone calls and having upwards of 12 hours of phone talk
10 time weekly. See Exhibit A.

11 26. From on or about September 30, 2013 through
12 approximately November 4, 2014, Defendants employed Sarai
13 Phillips ("Phillips"). During this time, Phillips worked
14 as a so-called Relationship Manager at SpringBoard's main
15 office.

16 27. Phillips' responsibilities were the same as
17 Palmer's, described in ¶ 24, *supra*. See Exhibit B.

18 28. From on or about May 7, 2013 through
19 approximately September 11, 2014, Defendants employed
20 William Morrison ("Morrison"). During this time, Morrison
21 worked as a so-called Relationship Manager at
22 SpringBoard's main office.

23 29. Morrison's responsibilities were the same as
24 Palmer's, described in ¶ 24, *supra*. See Exhibit C.

25 30. From on or about December 2, 2013 through
26 approximately June 9, 2014 Defendants employed Lance
27 Benchley ("Benchley"). During this time, Benchley worked

1 as a so-called Relationship Manager at SpringBoard's main
2 office.

3 31. Benchley's responsibilities were the same as
4 Palmer's, described in ¶ 24, *supra*.

5 32. Upon information and belief, other Relationship
6 Managers at SpringBoard's main office had, and continue to
7 have, similar responsibilities.

8 33. According to SpringBoard's employee handbook,
9 attached hereto as Exhibit D, full-time employees, like
10 Relationship Managers, are those who work a minimum of
11 thirty-eight (38) hours per week.

12 34. Plaintiffs and other Relationship Managers were
13 scheduled to work Monday through Thursday from 8:00 a.m.
14 until 5:30 p.m. with a one hour lunch break and Friday
15 from 8:00 a.m. until 5:00 p.m. with a one hour lunch
16 break.

17 35. Relationship Managers were scheduled to work, and
18 did work, at minimum, forty-two (42) hours per week.

19 36. Plaintiffs did not always take their lunch breaks
20 and, therefore, occasionally worked through their lunch
21 breaks.

22 37. Upon information and belief, other Relationship
23 Managers also worked through their lunch breaks.

24 38. Plaintiffs' and other Relationship Managers'
25 salaries were not adjusted if they worked through their
26 lunch breaks.

27 39. Plaintiffs were paid on a purported salary basis,
28

1 plus commissions.

2 40. Upon information and belief, other Relationship
3 Managers were also paid on a salary basis, plus
4 commissions.

5 41. An employer must satisfy five conditions in order
6 to take advantage of the fluctuating work week calculation
7 of overtime. See *Blotzer v. L-3 Communs. Corp.*, 2012 U.S.
8 Dist. LEXIS 173126 (D. Ariz. 2012).

9 42. The five conditions that must be satisfied to
10 take advantage of the fluctuating work week are: (1) the
11 employee's hours must fluctuate from week to week; (2) the
12 employee must receive a fixed salary; (3) the salary must
13 meet the minimum wage standards; (4) the employee and
14 employer must have a clear mutual understanding that the
15 salary (not including overtime premiums) is fixed
16 regardless of the number of hours the employee works; and
17 (5) the employee must receive overtime compensation for
18 hours worked in excess of 40 hours, not less than one-half
19 the rate of pay. *Id.*, 29 C.F.R. § 778.114(a).

20 43. Plaintiffs and other Relationship Managers
21 consistently worked over 40 hours per week.

22 44. Plaintiffs and other Relationship Managers were
23 never told that they were going to be paid using the
24 fluctuating work week method.

25 45. Plaintiffs and other Relationship Managers were
26 not paid any additional amount of compensation for the
27 hours they worked over 40 hours per week.

46. Furthermore, the fluctuating work week method of pay should not be applied retroactively in a misclassification case. *Blotzer* at *35.

47. When Plaintiffs took a sick day, left early, or arrived late, time was deducted from their paychecks at their hourly rate.

48. Upon information and belief, other Relationship Managers also received deductions in pay when they took a sick day, arrived late, or left early.

49. Plaintiffs were not paid extra if they came in early, stayed late, or worked extra hours on the weekend.

50. Plaintiffs did, on occasion, come in early, stay late, and work on the weekend.

51. Upon information and belief, on occasion, other Relationship Managers also arrived early, stayed late, and worked on the weekend, and were also not paid for the additional time worked.

52. Plaintiffs were often required to work on weekends in order to complete their assigned work and meet the 300 calls per week requirement.

53. Plaintiffs and Defendants were aware of other Relationship managers working over their lunch hour, after hours, and on weekends.

54. Plaintiffs responded to numerous work-related phone calls and emails on the weekend.

55. Plaintiffs and Defendants were aware of other Relationship Managers also responding to work-related

1 phone calls and emails on the weekend.

2 56. Plaintiffs and other Relationship Managers were
3 not paid anything above their usual salary for the time
4 they spent working on weekends.

5 57. Plaintiffs were never compensated at a rate of
6 one and one-half times ($1\frac{1}{2}x$) their regular rate for
7 hours worked over forty (40) hours per week, as required
8 under 29 U.S.C. § 207.

9 58. Upon information and belief, SpringBoard
10 classified Relationship Managers, like Plaintiffs, as
11 "exempt" under the FLSA.

12 59. Plaintiffs and other Relationship Managers were
13 misclassified by the Defendants as exempt under the FLSA.

14 60. The overtime pay requirements of the FLSA do not
15 apply to salaried employees who work in a bona fide
16 executive, administrative, or professional capacity. 29
17 U.S.C. § 213(a)(1). Plaintiffs, as well as the other
18 members of the putative collective action, clearly do not
19 fall within any of the legally recognized exemptions.
20 Indeed, it is well-settled that FLSA exemptions are to be
21 narrowly construed against employers, like Defendants, and
22 withheld except as to persons plainly and unmistakably
23 within the terms of the regulation.

24 61. The administrative exemption to the FLSA applies
25 to employees whose primary duty is the performance of
26 office or non-manual work directly related to the
27 management or general business operations of the employer.

62. Under the FLSA, "work related to management or general business operations" includes, "work in functional areas such as tax; finance; accounting; budgeting; auditing; insurance; quality control; purchasing; procurement; advertising; marketing; research; safety and health; personnel management; human resources; employee benefits; labor relations; public relations, government relations; computer network, internet and database administration; legal and regulatory compliance; and similar activities." 29 C.F.R. § 541.201.

63. Plaintiffs and other Relationship Managers did not perform the types of tasks listed in ¶ 61, *supra*.

64. Furthermore, to qualify for the administrative exemption, "an employee's primary duty must include the exercise of discretion and independent judgment with respect to matters of significance." 29 C.F.R. § 541.202.

65. Factors to be considered when determining if an employee exercise discretion and independent judgment include, "whether the employee has authority to formulate, affect, interpret, or implement management policies or operating practices; whether the employee carries out major assignments in conducting the operations of the business; whether the employee performs work that affects business operations to a substantial degree, even if the employee's assignments are related to operation of a particular segment of the business; whether the employee has authority to commit the employer in matters that have

1 significant financial impact; whether the employee has
2 authority to waive or deviate from established policies
3 and procedures without prior approval; whether the
4 employee has authority to negotiate and bind the company
5 on significant matters; whether the employee provides
6 consultation or expert advice to management; whether the
7 employee is involved in planning long- or short-term
8 business objectives; whether the employee investigates and
9 resolves matters of significance on behalf of management;
10 and whether the employee represents the company in
11 handling complaints, arbitrating disputes or resolving
12 grievances." 29 C.F.R. § 541.202.

13 66. Plaintiffs and other Relationship Managers did
14 not perform the types of tasks listed in ¶ 64, *supra*.

15 **CLAIM FOR RELIEF**
16 **Violation of FLSA Overtime Compensation Standard**

17 67. Defendants have willfully failed to compensate
18 Plaintiffs, and others similarly situated, for overtime
19 hours they worked, as required under 29 U.S.C. § 207.
20 Plaintiffs, and others similarly situated, are entitled to
21 receive compensation at a rate of one and one-half times
22 (1½ x) their regular wage rate for any hours worked for
23 the Defendants in excess of forty (40) hours in any week,
24 plus liquidated damages, attorneys' fees and costs,
25 pursuant to 29 U.S.C. § 216(b), which form an integral
26 part of the relief sought.

27 68. The foregoing conduct, as alleged, constitutes a
28

1 willful violation of the FLSA within the meaning of 29
2 U.S.C. § 255(a).

3 **PRAYER**

4 **WHEREFORE**, Plaintiffs pray that they recover from
5 Defendants the following:

- 6 1. An award of unpaid overtime in an amount
7 appropriate to the proof adduced at trial
8 pursuant to 29 U.S.C. §§ 207 and 216(b);
- 9 2. An award of liquidated damages regarding number
10 1, *supra*, in an amount appropriate to the proof
11 adduced at trial pursuant to 29 U.S.C. § 216(b);
- 12 3. An enhancement payment of no less than \$5,000 to
13 Adam Palmer, Sarai Phillips, William Morrison,
14 and Lance Benchley, as compensation for the
15 expense they incurred on behalf of the class.
- 16 4. A declaratory judgment pursuant to the Federal
17 Declaratory Judgment Act, 28 U.S.C. § 2201, that
18 Defendants have willfully and wrongfully violated
19 their statutory and legal obligations and
20 deprived Plaintiffs, and the members of the
21 class, of their rights, privileges, protections,
22 compensation, benefits, and entitlements under
23 the law, as alleged herein;
- 24 5. Attorneys' fees pursuant to 29 U.S.C. § 216(b);
- 25 6. Court costs and costs of litigation pursuant to
26 29 U.S.C. § 216(b);
- 27 7. In the event Defendants fail to satisfy any

1 judgment against them within ten (10) days of the
2 judgment becoming final, Defendants shall pay to
3 the prevailing Plaintiffs an amount which is
4 treble the amount of the outstanding judgment
5 with interest thereon, in accordance with A.R.S.
6 § 23-360; and

7 8. Such other and further equitable relief as the
8 Court deems just.

9 RESPECTFULLY SUBMITTED this 13th day of April, 2015.

10 LUBIN & ENOCH, P.C.

11
12 /s/ Nicholas J. Enoch
13 Nicholas J. Enoch, Esq.
Attorney for Plaintiffs

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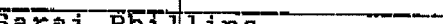
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CONSENT TO JOIN COLLECTIVE ACTION

I understand that this lawsuit is brought under the FLSA, as amended, 29 U.S.C. § 216(b). I hereby consent, agree and opt-in to become a Plaintiff herein and be bound by any judgment of the Court or any settlement of this action.


Adam J. Palmer
Plaintiff


William J. Morrison
Plaintiff


Sarai Phillips
Plaintiff


Lance Benchley
Plaintiff

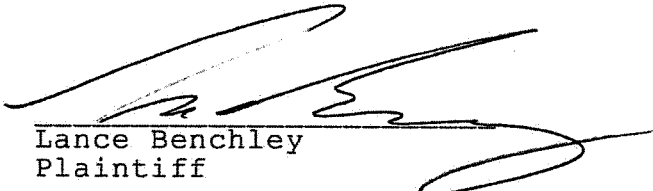
CONSENT TO JOIN COLLECTIVE ACTION

I understand that this lawsuit is brought under the
FLSA, as amended, 29 U.S.C. § 216(b). I hereby consent,
agree and opt-in to become a Plaintiff herein and be bound
by any judgment of the Court or any settlement of this
action.

Adam J. Palmer
Plaintiff

William J. Morrison
Plaintiff

Sarai Phillips
Plaintiff



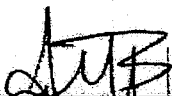
Lance Benchley
Plaintiff

CONSENT TO JOIN COLLECTIVE ACTION

I understand that this lawsuit is brought under the
FLSA, as amended, 29 U.S.C. § 216(b). I hereby consent,
agree and opt-in to become a Plaintiff herein and be bound
by any judgment of the Court or any settlement of this
action.


Adam J. Palmer
Plaintiff

William J. Morrison
Plaintiff


Sarah Phillips
Plaintiff

Lance Benchley
Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of April 2015, I electronically transmitted the attached First Amended Complaint to the U.S. District Court Clerk's office using the CM/ECF System for filing.

/s/Cristina Gallardo-Sanidad